

REMARKS/ARGUMENTS

A Request for Continued Examination has been filed herewith. Claims 1-20 are pending in the application. Applicants have amended claims 1, 10, and 17. Applicants respectfully submit that these amendments are supported by the original claims and the specification and request entry of these amendments.

Claims 1-6, 8-10 and 16-17 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Loffler (collectively U.S. Published Application No. 2001/0005737 and U.S. Patent No. 6,489,395). Claims 7, 11-15 and 18-20 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of Loffler, either alone or in combination with Röckl et al. (U.S. Patent No. 5,690,919).

Loffler is directed to specific oligoesters for use in emulsions. These oligoesters were previously known as soil release polymers in detergents. The oligoester is prepared using the polycondensation reaction provided in claim 1 of Loffler. Examples 1-7 in Loffler include three polyester oligomers that are presumably prepared according to the claimed method. Although Loffler mentions that emulsions comprising the specific oligoester may be oil-in-water or water-in-oil emulsions, Loffler does not disclose the use of Aristoflex AVC in water-in-oil emulsions. In fact, there is no mention of Aristoflex AVC except in Examples 1-7 where it is used exclusively as an ingredient in oil-in-water emulsions. Therefore, even if Aristoflex AVC were to be considered to be an ammonium acryloyldimethyltaurate/vinylpyrrolidone copolymer as recited in the present claims, Loffler does not disclose an emulsion comprising up to 5% by weight of one or more ammonium acryloyldimethyltaurate/vinylpyrrolidone copolymers, wherein the emulsion is in the form of a water-in-oil emulsion, as recited in the current claims. Furthermore, Loffler does not disclose an eye shadow including such a water-in-oil emulsion or a method of treating skin or hair comprising applying to the skin or hair such a water-in-oil emulsion, as is claimed in current claims 16-20. Accordingly, the present claims are not anticipated by Loffler under 35 U.S.C. § 102(e).

The present claims are also not obvious in view of Loffler, either alone or in combination with Röckl. As stated in the previous paragraph, Loffler does not disclose the use of the copolymer recited in the present claims in an emulsion, wherein the emulsion is in the form of a

Appl. No.: 10/602,392
Amdt. dated 10/11/2005
Reply to Office action of April 11, 2005

water-in-oil emulsion. Furthermore, Loffler provides no teaching or suggestion for using the copolymer recited in the present claims in a water-in-oil emulsion. Röckl also fails to provide this teaching or suggestion. Accordingly, the present claims are also not obvious under 35 U.S.C. § 103(a) in view of Loffler, either alone or in combination with Röckl.

Applicants respectfully submit that all the claims are in condition for allowance. Accordingly, a Notice of Allowance is respectfully requested in due course. If any minor informalities need to be addressed, the Examiner is directed to contact the undersigned attorney or Andrew T. Meunier by telephone at the number listed below to facilitate prosecution of this case.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Cynthia V. Hall
Registration No. 56,544

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street,
Suite 4000
Charlotte, NC 28280-4000
Tel Atlanta Office (404) 881-7000
Fax Atlanta Office (404) 881-7777

"Express Mail" mailing label number EV 700810299 US
Date of Deposit: October 11, 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to:
Mail Stop RCE Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450


Shana Moore